

Sha Jetmal Vs. the General Manager, Southern Railways and Another

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Court : Karnataka

Decided On : Apr-12-1994

Reported in : AIR1995Kant219; ILR1994KAR1524; 1994(2)KarLJ628

Judge : R.V. Vasanth Kumar, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 80; Indian Railways Act; [General Clauses Act, 1897](#) - Sections 3(56); Limitation Act - Sections 20

Appeal No. : Regular Second Appeal No. 418 of 1993

Appellant : Sha Jetmal

Respondent : The General Manager, Southern Railways and Another

Advocate for Def. : Sanjay Gowda and ;N.S. Srinivasan, Standing Counsel for Railways

Advocate for Pet/Ap. : R.G. Suresh and ;C.R.V. Swamy, Advs.

Judgement :

1. This Second Appeal is directed against the judgment and decree in R.A. No. 6/90 passed by the Court of Additional District Judge, Shimoga. The first appellate Court while dismissing the appeal confirmed the decree passed by the Court of Civil Judge, in O.S. No. 13/83 wherein the plaintiff's suit was dismissed. A few facts briefly stated are thus:

2. The plaintiff filed a suit for recovery of Rs. 92,282-20 being the value of the consignment despatched. Since the same was not delivered at the intended destination the plaintiff caused a notice through his Advocate dated 22-6-1982 addressed to the General Manager, Southern Railways, Madras, The Chief Commercial Superintendent, Southern Railways, Madras and the Chief Commercial Superintendent, Jodhpur. It is also an admitted fact that the notice which was got issued by the plaintiff through his Advocate was not signed either by the party or by the Advocate. The plaintiff has got the copy of the notice marked as Ex. P-12, whereas the defendants have got the copy of Ex. P.12 (another copy of the notice) marked as Ex. D-2.

3. From a perusal of Ex: P. 12 and Ex. D.2 it could be stated that the contents of the notice are in parametric with each other' and it is also to be noted that both these copies which have been marked through the parties do not bear the signature of the Advocate except his name being stated as 'B.R. Raghupathi'. For purposes of proper appreciation of the points canvassed by both the parties, the contents of Ex. P. 1 (Ex. D-2) are necessary which reads as follows:

'From, Sagar,

Date. 22-6-1982

B. R. Raghupathi,

Advocate, Sagar,

To.

1. General Manager,

Southern Railway,

Parte Town, Madras-3.

2. The Chief Commercial Superintendent,

South Railway, Madras.

3. The Chief Commercial Superintendent,
Northern Railway, Jodhpur,
Rajasthan.

Under instructions from my client Sha Jetmal son of Sagarji resident of Sagar town I am issuing this legal notice under Section 80 C.P.C. and also under Indian Railways Act.

IN THE COURT OF THE CIVIL JUDGE

AT SAGAR O. S. No./82

Plaintiff: Sha Jetmal s/o Sagarji, major, r/o Sagar town, Shimoga District, Karnataka State.

v.

Defendant :. 1. Chief Commercial Superintendent, Southern Railways, Madras.,
2. Secretary, Union of India, New Delhi.

Under Order 7, Rule 1, CPC the plaintiff states as follows:

1. The names and address of the parties are as stated above in the cause title.
2. The plaintiff booked one wagon load of timber (sealed) from Sagar-Jambagaru Railway Station to Mokalsar in Rajasthan State under RR. No. 940919 on 22-5-1981. The timber was booked in Wagon No. SR. BKC 3782. One hundred thirty five logs were loaded in the wagon measuring in all 498-37 cft. The consignment was to be delivered at the destination by the defendant within the reasonable time.
3. The defendant has not delivered the consignment at the destination. As such the plaintiff lodged a claim in the DRM Commercial at Mysore. But plaintiff was asked to approach the Divisional Railway Manager (Commercial), Jodhpur. Though an approach was made to the latter no relief is given

4. Plaintiff has corresponded with the defendants authorities several times. But still the defendant has not delivered the consignment to the destination as per the R.R. Hence the plaintiff has suffered heavy loss. This suit is filed for recovery of the consignment dispatched or for the worth of timber booked in the wagon to be delivered at Mokalsar in Rajasthan. xx xx xx

5. Cause of action for this suit has arisen on 22-5-1981 at Sagar-Jambagar when wagon was booked and timber were loaded which is well within the jurisdiction of this Hon'ble Court.

6. Suit claim:

Teak timbers of 135 (or its value to logs measuring 496-37 be ascertained on cfts., which has been the date of suit) in the wagon.

Notice fee Rs. 250-00Plaint reliefs:

Plaintiff prays for judgment and decree against defendants.

(a) for delivery of the articles booked and handed over to the defendant for transporting the same to its destination.

(b) or in the alternative

(c) for value (to be ascertained on the date of suit)

(d) for court costs etc.,

Please take notice that within two months from the date of receipt of this notice, the goods are to be handed over to my client failing which suitable and necessary action will be taken, you will be liable to for all the costs which my client the notice fee of Rs. 250/- is to be paid by you.Sagar,Date. (B.R. Raghupathi)'

From a perusal of Ex. D.2 the identity of the person who has caused the notice, the particulars of the client, the value of consignment and also the intending legal action to the initiated could be spelt out. The court of the first instance after considering the merits of the plaintiffs claim and also the contentions advanced by

the defendants has quantified the loss in a sum of Rs. 44,853/-. After so quantifying the loss, the court of first instance has dismissed the plaintiff's suit on the ground that there has been non-compliance with the mandatory provisions of Section 80 of the Code of Civil Procedure in view of the fact that the notice that was issued by the plaintiff has not been signed either by the party or by the Advocate who is said to have issued the notice. Aggrieved by the judgment and decree passed by the Court of first instance, the plaintiff filed an appeal before the Court of Additional District Judge, Shimoga, in R.A. No. 6/90.

4. The first appellate court after formulating the points for consideration confirmed the decree passed by the court of first instance on the question of construction of a notice and at the same time upheld the quantification of the loss made by the court of first instance. The short compass of the case that requires consideration is whether the notice, i.e., Ex.P. 12 (Ex. D2) satisfies the requirement of Section 80 of the Code of Civil Procedure and whether the plaintiff's suit has to be decreed to the extent that has been quantified by both the courts below. There is no dispute as to the fact of receipt of Ex. P-12 (Ex. D-2) by the defendants, since the defendants themselves have produced a copy of Ex. P-12 and the same is marked as Ex.D.2. The appellant's counsel invited the attention of this Court to the ratio decided in *Ghanshyam Dass v. Dominion of India* : [1984]3SCR229 wherein the Supreme Court has discussed at length about the purpose behind issuing notice under Section 80, CPC to the authorities concerned. Here, it is not the case where a notice has not been issued at all, but the only question is whether the notice, though issued, not signed either by the party or the Advocate could be construed as a valid notice in the eye of law for purposes of compliance with Section 80 of the Code of Civil Procedure. The relevant ratio decided by the Supreme Court in the aforesaid decision reads as follows (at pp 1008, 1009):

'The object of the notice contemplated by that section is to give to the concerned Governments and public officers opportunity to reconsider the legal position and to make amends or settle the claim, if so advised without litigation. The legislative intention behind that section in our opinion is that public money and time should not be wasted on unnecessary litigation and the Government and the public officers should be given a reasonable opportunity to examine the claim made

against them lest they should be drawn into avoidable litigations. The purpose of law is advancement of justice. The provisions in Section 80, Civil Procedure Code are not intended to be used as booby traps against ignorant and illiterate persons. In this case we are concerned with a narrow question. Has the person mentioned in the notice as plaintiff brought the present suit or is he someone else.'

The Supreme Court has further observed that if the averments made by the plaintiff in the plaint fulfils the requirement of Section 80 as far as the cause of action and the reliefs claimed are concerned, the Court must take a liberal view of the matter. Here, the plaintiff has made known in the aforesaid notice the nature of the suit intended to be filed and if that is so, I am of the opinion that amounts to sufficient compliance of Section 80 irrespective of the fact that the party or his Advocate had not signed that notice. The error is only a technical in nature.

5. Sri Sanjay Gowda for Sri N.S. Srinivasan, learned counsel for the respondents, bring to the Court's notice the ratio, decided in *M/s. Hindustan Construction Co., Ltd. v. The Union of India*, : [1967]1SCR843 . He specifically invited this Court's attention to paragraph 6 of the aforesaid decision which reads as follows:

'(6) This brings us to the meaning of the word 'sign' as used in the expression 'signed copy'. In Webster's New World Dictionary the word 'sign' means 'sing' means 'to write one's name on, as in acknowledging authorship, authorising action, etc.,' To write one's name is signature. Section 3(56) of the General Clauses Act No. 10 of 1897, has not defined the word 'sing' but has extended its meaning with reference to a person who is unable to write his name to include 'mark' with its grammatical variations and cognate expressions. This provision indicates that signing means writing one's name on some document or paper. In *Mohesh Lal v. Busant Kumaree*, (1881) ILR 6 Cal 340, a question arose as to what 'signature' meant in connection with S. 20 of the Limitation Act, No. IX of 1871. It was observed that 'where a party to a contract signs his name in any part of it in such a way as to acknowledge that he is the party contracting, that is a sufficient signature'. It was further observed that the document must be signed in such a way as to make it appear that the person signing it is the author of it, and if that appears it does not matter what the form of the instrument is, or in what part of the

it the signature occurs.'

6. It is not the case of the defendants that the copy of the notice Ex. P12 is different from that of the copy of notice Ex. D2 received by them. It is also not their case that they are disputing the correctness or authenticity of the contents of the notice said to have been issued by the plaintiffs. The only contention is that Ex. P12 and Ex. D2 cannot be construed to partake the character of the notice, as the same has not been duly signed and in the absence of duly signed notice, the question of compliance with Section 80 would not arise. The respondents counsel further submits that nowhere in the plaint the plaintiff stated that he has issued notice under Section 80 of Code of Civil Procedure which, it is argued, is a condition pre-requisite before filing the suit against the concerned authorities. He also submitted that mere issuance of notice under Section 80 on the defendants is not only sufficient, but also there must be an averment in the plaint to the effect that notice has been duly served on the concerned authorities. In the absence of such an averment in the plaint, the plaint has to be rejected as the suit was not maintainable to appreciate this contention. Reliance is to be placed on a decision of the Supreme Court in *Owners and Parties Interested in M. V. 'Vali Pero' v. Fernando Lopez* : AIR 1989 SC2206 . In para 18 the Supreme Court has observed as follows:

'18. Rules of procedure are not by themselves an end but the means to achieve the ends of justice. Rules of procedure are tools forged to achieve justice and are not hurdles to obstruct the pathway to justice, Construction of a rule of procedure which promotes justice and prevents its miscarriage by enabling the court to do justice in myriad situations, all of which cannot be envisaged, acting within the limits of the permissible construction, must be preferred to that which is rigid and negatives the cause of justice. The reason is obvious. Procedure is meant to subserve and not rule the causes of justice. Where the outcome and fairness of the procedure adopted is not doubted and the essentials of the prescribed procedure have been followed, there is no reason to discard the result simply because certain details which have not prejudicially affected the result have been inadvertently omitted in a particular case. In our view, this appears to be the pragmatic approach which needs to be adopted while construing a purely

procedural provision. Otherwise, rules of procedure will become the mistress instead of remaining the hand maid of justice, contrary to the role attributed to it in our legal system.'

In the instant case apart from the contention with regard to the notice having not been duly served, no other contentions have been advanced regarding the quantification of the loss incurred by the plaintiff. So, it has to be stated, that the approach of both the courts below is based on a too technical interpretation regarding the validity of the notice and regarding noncompliance of Section 80 of Civil Procedure Code. Therefore, this is a fit case which requires interference by this Court in exercise of its power under Section 100 of Code of Civil Procedure. As such, the findings arrived at and the reasonings recorded by both the courts below are hereby set aside and there shall be a decree for a sum of Rs. 44,853/- which has already been quantified by both the courts below. In view of the circumstances of the case this is not a fit case where interest has to be awarded. Both the parties to bear their own costs. This appeal is allowed to the extent mentioned above.

7. Order accordingly.

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